

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No.
)	05-06002-01-CR-SJ-GAF
LISA M. MONTGOMERY,)	
)	
Defendant.)	

ORDER OF CONTINUANCE

On January 12, 2005, the Grand Jury returned an indictment charging the defendant with kidnapping and willfully transporting Victoria Jo Stinnett in interstate commerce from Skidmore, Missouri, across the state line to Melvern, Kansas, and the actions resulting in the death of Bobbie Jo Stinnett, in violation of 18 U.S.C. § 1201(a)(1). This criminal action is currently set for trial on the joint criminal trial docket which commences March 14, 2005.

On February 25, 2005, defendant Montgomery, by and through counsel, filed a motion for continuance and suggestions in support thereof. The suggestions in support of the defendant's motion for continuance state, in part, as follows:

Both the defendant and the government have agreed on a trial setting of April 24, 2006.

The government has announced its intention of seeking the death penalty in this case. However, the authorization process within the Department of Justice will take several months. As a result, the government will not be able to file its Notice of Intention to Seek the Death Penalty until September 2005.

As a result, additional time is necessary in order to determine if the government will, in fact, seek the death penalty in this case. If a Notice of Intent is filed by the government, the defense needs substantial time to prepare this case for trial and to prepare for the penalty phase.

The Speedy Trial Act of 1974, as amended, mandates the commencement of the trial of a defendant within 70 days from the defendant's first appearance before a judicial officer of the Court in which the charge is pending. In computing the 70-day time period, the periods of delay set forth in 18 U.S.C. § 3161(h) are to be excluded. Any period of delay resulting from a continuance granted at the request of a defendant is excludable if the Court finds the ends of justice served by the taking of such action outweigh the best interest of the public and the defendant in a speedy trial, provided the Court sets forth the reason for such finding.

Section 3161(h)(8)(C) provides that a continuance shall not be granted because of general congestion of the Court's calendar. In ordering this case removed from the joint criminal jury trial docket which will commence March 14, 2005, and continuing the trial until the joint criminal jury trial docket which will commence April 24, 2006, the Court is not doing so because of congestion of its calendar.

The Court finds that:

1. In light of the circumstances set out in the above-quoted portion of the suggestions in support of the motion for continuance, it would be unreasonable to expect defense counsel to prepare this criminal action adequately for trial prior to April 24, 2006;
2. In light of the circumstances set out in the above-quoted portion of the suggestions in support of the motion for continuance, failure to remove this criminal action from the joint criminal jury trial docket which will commence March 14, 2005, and grant a continuance likely would result in a miscarriage of justice;

3. In light of the circumstances set out in the above-quoted portion of the suggestions in support of the motion for continuance, failure to remove this criminal action from the joint criminal jury trial docket which will commence March 14, 2005, and grant a continuance would deny defense counsel the reasonable time necessary for effective preparation and thus would deny the defendant her right to effective assistance of counsel; and
4. In light of the circumstances set out in the above-quoted portion of the suggestions in support of the motion for continuance, the ends of justice served by removing this criminal action from the joint criminal jury trial docket which will commence March 14, 2005, and granting a continuance outweigh the best interest of the public and the defendant in a speedy trial.

It is therefore,

ORDERED that the motion for continuance of this criminal action filed by defendant Montgomery on February 25, 2005 (Doc. No. 27), is GRANTED and that this criminal action is removed from the joint criminal jury trial docket which will commence March 14, 2005. It is further

ORDERED that this criminal action is set for trial on the joint criminal jury trial docket which will commence April 24, 2006. It is further

ORDERED that, pursuant to 18 U.S.C. § 3161(h), the time between the date of this Order and April 24, 2006, shall be excluded in computing the time within which the trial of this criminal action must commence.

/s/ JOHN T. MAUGHMER

JOHN T. MAUGHMER
Chief United States Magistrate Judge

Kansas City, Missouri